

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 04

In the Matter of:

STARBUCKS CORPORATION,

Employer,

and

WORKERS UNITED a/w SEIU,

Petitioner.

Case **04-RC-301198**

The above-entitled matter came on for hearing pursuant to notice, before **MARY R. LEACH**, Hearing Officer, via videoconference, on **Thursday, September 1, 2022**, at **10:00 a.m.**

A P P E A R A N C E S

On Behalf of the Employer:

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On Behalf of the Petitioner:

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Also Present:

ALBERT MILLAN
District Manager, Starbucks Corporation

MIKE PERRY
Store Manager, Starbucks Corporation

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1		<u>E X H I B I T S</u>	
2	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	BOARD 'S		
4	B-1	6	6
5	B-2	7	7
6	B-3	10	12
7	B-4	12	13
8	B-5	49	50
9			
10	EMPLOYER 'S		
11	E-1	30	38
12	E-2	32	38
13	E-3	38	42 - Rejected
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P R O C E E D I N G S

(Time Noted: 10:42 a.m.)

HEARING OFFICER LEACH: The hearing will be in order.

This is a formal hearing in the matter of Starbucks,
Case No. 04-CA-301198 [sic], before the National Labor
Relations Board. Videos, livestream, or recording of this
procedure or any part of it in any fashion is prohibited,
including, but not limited to, audio, video and screenshots.

The Hearing Officer before the NLRB is Mary R. Leach.
All parties have been informed of the procedures at formal
hearing before the Board by service of a Description of
Procedures in Certification and Decertification Cases with
the notice of hearing.

Now I would like parties to please introduce themselves.
For the Petitioner.

MR. GONZALEZ: Julian Gonzales of Barnard Iglitzin &
Lavitt.

HEARING OFFICER LEACH: Okay.

For the Employer.

MS. MARKEY: Nina Markey, Littler.

HEARING OFFICER LEACH: Okay.

Are there any other appearances?

(No response.)

HEARING OFFICER LEACH: Let the record show no response.
Are there any other persons, parties, or labor

1 organizations in the hearing room who claim an interest in
2 this proceeding?

3 **(No response.)**

4 HEARING OFFICER LEACH: Let the record show no response.

5 Now we will discuss our electronic exhibits. The first
6 is our formal papers, which I emailed to the parties last
7 night. That document is Board's Exhibit 1. And I think it
8 has about 4 or 5 pages.

9 **(Board's Exhibit 1 marked for identification.)**

10 HEARING OFFICER LEACH: Are there any objections to
11 receiving Board's Exhibit 1 into evidence?

12 From the Petitioner?

13 MR. GONZALEZ: No objection.

14 HEARING OFFICER LEACH: From the Employer?

15 MS. MARKEY: No objection.

16 HEARING OFFICER LEACH: Okay. Board's Exhibit 1 is
17 received.

18 **(Board's Exhibit 1 received in evidence.)**

19 HEARING OFFICER LEACH: Are there any motions to
20 intervene in this proceeding, or any other motions to be
21 submitted to the Hearing Officer for ruling at this time?

22 MS. MARKEY: None from the Employer.

23 HEARING OFFICER LEACH: From the Petitioner?

24 MS. GONZALEZ: No.

25 HEARING OFFICER LEACH: If you have motions that you

1 wanted to present, you can say that now.

2 MS. MARKEY: We do have the petition to revoke. I'm
3 sorry. So we're putting on the record and making sure that
4 that is accorded with regard to the subpoena. It is my
5 understand that will be addressed at the conclusion of this
6 proceeding.

7 HEARING OFFICER LEACH: Right. Yes. That's what I
8 wanted. I just wanted to be sure that it was in the record
9 that the Union submitted a petition -- a subpoena to the
10 Employer and that the Employer provided some documents that
11 involved the petition to revoke on others. Is that a good
12 summary?

13 MR. GONZALEZ: That's accurate. Yes.

14 HEARING OFFICER LEACH: Off the record I said that we
15 would go through the hearing and I would move on that at the
16 end of the hearing.

17 **(Board's Exhibit 2 marked for identification.)**

18 HEARING OFFICER LEACH: Now we'll move on to Board's
19 Exhibit 2, which I sent to the parties. Our typical
20 stipulations, commerce, unit, labor organization status. Are
21 there any objections to submitting Board's Exhibit 2 into
22 evidence?

23 MR. GONZALEZ: No objection from the Union.

24 MS. MARKEY: No objection from the Employer.

25 **(Board's Exhibit 2 received in evidence.)**

1 HEARING OFFICER LEACH: I will note that the document,
2 those have not been signed yet. Hopefully by the end of the
3 hearing they will be signed.

4 If we close the record, because I know that Julian is on
5 the West Coast, I would just ask that we have permission to
6 receive the signed document and put that into the record from
7 the Employer, just so we have a signed Board 2 from both
8 parties.

9 Are there any petitions pending in other regional
10 offices that would have an effect on this petition?

11 MR. GONZALEZ: No on that.

12 MS. MARKEY: We don't believe so.

13 HEARING OFFICER LEACH: Okay.

14 MS. MARKEY: I'm sorry, Mary, I have to preserve the
15 argument and make sure that I'm consistent with it. To the
16 extent that we have argued that the August 15th letter
17 submitted to General Counsel Abruzzo outlining the election
18 misconduct and the objections to same, filed in Region 14,
19 that is currently being adjudicated through objections
20 hearing governed by Region 29 we believe, that outcome is
21 relevant with regard to our request, insofar as the request
22 for manual is in part based upon the misconduct that has been
23 conducted in mail ballot elections in other regions,
24 primarily Region 14, although there has been alleged
25 misconduct in a few others that supports the information in

1 the August 15th letter requesting a stay of all mail ballot
2 elections pending the investigation into Region 14 and any
3 conclusions that are drawn as to Region 14, as well as
4 whether that misconduct has happened elsewhere.

5 HEARING OFFICER LEACH: Okay. The parties are reminded
6 that prior to the close of hearing, the Hearing Officer will
7 solicit the parties' positions on election details, including
8 the type, mail, manual, or partial mail manual, best days of
9 the week, times and locations for conducting an election, any
10 days in which an election could not occur, including the
11 reason, where and how to conduct the count of the ballots,
12 and the eligibility period, most recent payroll period ending
13 date and frequency of pay periods, but will not permit
14 litigation of those issues. The Hearing Officer will also
15 inquire as to the need for foreign language ballots and
16 notices of election and the proposed number of observers for
17 each party for each polling period, including the reason.
18 Please have that relevant information available at that time.

19 The parties have been advised that the hearing will
20 continue from day to day as necessary until completed, unless
21 the Regional Director concludes that extraordinary
22 circumstances warrant otherwise.

23 The parties are advised that upon request, they're
24 entitled to a reasonable period at the close of hearing for
25 oral argument, which shall be included in the transcript of

1 the hearing. Any party desiring to submit a brief to the
2 Regional Director shall be entitled to do so within 5
3 business days after the close of hearing. Prior to the close
4 of hearing, and for good cause, the Hearing Officer may grant
5 an extension to file a brief not to exceed an additional 10
6 days.

7 Now we will move on to the Statement of Position and
8 Responsive Statement of Position. The Employer has completed
9 and submitted a Statement of Position, which will be marked
10 as Board's Exhibit 3. I emailed that to the parties last
11 night. It includes the Statement of Position as from the
12 Employer's typed position statement and the list of employees
13 and also the certificate of service. I want to be sure that
14 all parties have received that, including the court reporter.
15 I would like to mark that as Board's Exhibit 3.

16 **(Board's Exhibit 3 marked for identification.)**

17 HEARING OFFICER LEACH: Is there any objection from the
18 Petitioner to Board's Exhibit 3?

19 MR. GONZALEZ: Yes. The Union does not object, of
20 course, to the Statement of Position, but the Union objects
21 to the attachment, to exhibit attached to it, which is an
22 unauthenticated document consisting of solely hearsay
23 accusations that goes far beyond presentation of a position
24 to attempting to litigate the propriety of the type of
25 election. Therefore, I don't think it's -- it's an attempt

1 to litigate by other means by including this prior position
2 statement to General Counsel Abruzzo along with the Statement
3 of Position. We therefore do not object to the admission of
4 the position statement but do object to the admission of the
5 attached exhibit.

6 HEARING OFFICER LEACH: Okay. Does the Employer wish to
7 respond to that?

8 MS. MARKEY: Yes. We think that the letter that is
9 attached to the Statement of Position is more than sufficient
10 and has served as the base -- those allegations have served
11 as the basis for an investigation with the Office of the
12 Inspector, as well as an objections hearing that is currently
13 ongoing in Region 14 around that election misconduct,
14 centering on partners being able to vote in person when there
15 was a stipulated mail ballot election.

16 While there has been plenty of evidence already
17 introduced in that proceeding, including three partners
18 admitting to being able to vote in person, as well as the
19 Union admitting that that happened, we do not seek to have an
20 ancillary litigation of that issue here when we are only
21 deciding the issue of mail ballot versus in-person.
22 Nonetheless, we have submitted that letter and believe it is
23 appropriate as a basis for our request nationwide that we do
24 have a stay on mail ballot elections until this misconduct in
25 Region 14 is adjudicated and until there's confirmation that

1 it hasn't happened elsewhere.

2 HEARING OFFICER LEACH: Okay. Thank you to both parties.
3 Thank you for your responses. At this time, I'm going to
4 allow the entire submission from the Employer, their SOP
5 document, including that, I forget if it's August 14th or
6 15th, attachment.

7 Again, I said on -- I believe I said on the record, if
8 not I'll do it right now, that the purpose of this hearing is
9 mail versus manual. That particular issue has not occurred
10 in our region, and we're just going to focus on mail versus
11 manual. But I'm not going to remove that document from the
12 SOP, so I'll will overrule that and go ahead and -- that
13 Employer's complete SOP will be put into the record. But the
14 Union's response is noted.

15 **(Board's Exhibit 3 received in evidence.)**

16 **(Board's Exhibit 4 marked for identification.)**

17 HEARING OFFICER LEACH: The Petitioner has also
18 completed a Responsive Statement of Position, which I marked
19 as Board's Exhibit 4 and sent to the parties, and that
20 included their RSOP form and attached opposition statement.
21 And I emailed that to the parties including the court
22 reporter. Any objection from the Employer related to that?

23 MS. MARKEY: None.

24 HEARING OFFICER LEACH: Okay. I'm guessing the Union
25 has no objection to that?

1 MR. GONZALEZ: That's correct.

2 HEARING OFFICER LEACH: Okay.

3 So Board's Exhibit 4 is received into evidence.

4 **(Board's Exhibit 4 received in evidence.)**

5 MS. MARKEY: And, Mary, for the record, to make sure
6 that we have the correct copy, it's the -- it's going to be
7 admitted into evidence as you circulate this morning.

8 HEARING OFFICER LEACH: I think I sent that last night
9 to the parties. Let me check. Yeah. I have an email.
10 Board's Exhibit 3 is the Employer's SOP documents, and there
11 is an email right after that, 4:51 yesterday. Board's
12 Exhibit 4 is attached, the Union RSOP. It includes --

13 MS. MARKEY: Understood.

14 HEARING OFFICER LEACH: -- two documents. Yes.

15 MR. GONZALEZ: I don't understand the Employer's
16 question. I'd like clarification. The question implies that
17 there's various versions of the Responsive Statement of
18 Position, whereas only one was submitted.

19 MS. MARKEY: I was inquiring as to the Board's exhibits.
20 There was multiple versions of the Board -- the Joint
21 exhibits that were circulated. That's what I was inquiring
22 about.

23 MR. GONZALEZ: Thank you.

24 MS. MARKEY: To make sure that I'm looking at the
25 correct one received from Mary.

1 HEARING OFFICER LEACH: And I'm sorry. Yeah. I did
2 initially send out Board's Exhibit 1 that had maybe 40 or 50
3 pages in it, and it included the SOP documents. I separated
4 them.

5 MS. MARKEY: And that's why I --

6 MR. GONZALEZ: I understand now. Thank you, both.

7 MS. MARKEY: And I do want to make sure, Mary, just for
8 the record, that the one that's being admitted is the one
9 that does have the Exhibit A. I understand the rulings with
10 regard to that, but that it does have the Exhibit A attached
11 to it.

12 HEARING OFFICER LEACH: Are you talking about the
13 Employer's SOP?

14 MS. MARKEY: The Employer's SOP and the Exhibit 1, the
15 August 15th letter.

16 HEARING OFFICER LEACH: One moment. I think the answer
17 to that is yes, but let me just look and see.

18 MS. MARKEY: Thank you.

19 HEARING OFFICER LEACH: Okay. The email I sent last
20 night, it went through at 4:48 p.m., these are the Employer's
21 SOP documents, one moment, that is a 26 page --

22 MS. MARKEY: Yes.

23 HEARING OFFICER LEACH: That's it, right? And it
24 includes the letter that you're referring to. The August
25 15th letter?

1 MS. MARKEY: Yes.

2 HEARING OFFICER LEACH: Yes. That's it. That's in
3 there.

4 MS. MARKEY: Thank you. I just wanted to make sure.

5 HEARING OFFICER LEACH: Okay.

6 So at this point, just so we're clear, the issue in the
7 hearing is mail versus manual, and I will get some
8 information from the parties about that.

9 For the Union, we always ask this question: Do you wish
10 to proceed in an election in an alternate unit if the
11 Regional Director decided that?

12 MR. GONZALEZ: Yes, we do. Thank you.

13 HEARING OFFICER LEACH: Okay.

14 Do we need any other -- anything besides our standard
15 eligibility formula? Full-time, regular part-time, for the
16 unit employees?

17 MR. GONZALEZ: The Union's position is no. We don't
18 need anything beyond that.

19 MS. MARKEY: Same with the Employer.

20 HEARING OFFICER LEACH: Okay.

21 Now I would like to have the Employer provide an opening
22 statement concerning your position and why we're here today,
23 and then I will allow the Union to do the same.

24 MS. MARKEY: Thank you.

25 **OPENING STATEMENT**

1 MS. MARKEY: Three reasons why a mail ballot election is
2 inappropriate and the Regional Director should issue a
3 decision ordering an in-person election:

4 I will rely largely on the arguments outlined in our
5 Statement of Position and previously asserted before the
6 Region in other elections where we've similarly sought
7 in-person.

8 The first argument is *Aspirus* is outdated, particularly
9 the reliance -- positivity rate as a bar to in-person
10 elections. Quite frankly, if that remains the standard, we
11 may never return to in-person elections. That standard, as
12 outlined again in our Statement of Position, was put forth at
13 the beginning of the COVID pandemic, before vaccination,
14 before vaccination rates, and has been largely disregarded by
15 most reputable -- that track COVID statistics. The
16 positivity rate no longer has the meaning it did when *Aspirus*
17 was first decided and should not be, as it has been, the sole
18 bar to in-person elections. Even if you apply *Aspirus*, and
19 even if you rely on the factors there, they're all met here
20 and support an in-person election, other than the positivity
21 rate, which we do not believe should bar it, especially here
22 where you are hovering around 10 percent. But we have the
23 higher vaccination rates and other COVID statistics that we
24 outline in our briefing and cite to those publicly available
25 sources supporting them.

1 That's further supported in this Region by the fact that
2 we had an in-person election, albeit by agreement of the
3 parties by stipulation between the Union and the Employer
4 with the approval of NLRB and via stipulation, had an
5 in-person election for one of the Philadelphia Market stores,
6 the 12th and Market store. It was held at the 12th and Walnut
7 store on July 13th. At that time the positivity rate did
8 exceed 5 percent, and we still had an in-person election
9 without any COVID implications, further underscoring the
10 argument in our Statement of Position as to the reliance on a
11 positivity rate ignores the reality of how these partners are
12 working together in the stores. They are working together
13 without any mask mandates, without any other significant
14 protocols that couldn't be put into place for an election to
15 make it safe, in the same way that the work environment is
16 safe, both at the NLRB as well as at the stores.

17 And, finally, the third argument, and this is an
18 additional, different one, and we've already discussed this
19 much in the context of the subpoena and in the context of the
20 issue as to what other proceedings in any other regions, if
21 any, are relevant. The third grounds that we are arguing in
22 support of a stay on all mail ballot elections and holding
23 in-person elections until the misconduct alleged in the
24 August 15th letter, appended to our Statement of Position, is
25 investigated by the Office of the Inspector General and

1 adjudicated through the current, ongoing objections hearing
2 in Region 14.

3 As outlined in the letter, and as being currently
4 adjudicated with record evidence that we have produced in
5 response to subpoena, albeit not pulling into this
6 proceeding, because we do not want to litigate this issue and
7 have a trial within a trial, but nonetheless, allegations
8 that have led to this investigation and to the objections
9 hearing are serious enough with regard to the
10 disenfranchisement of partners at multiple Starbucks
11 locations that we cannot stipulate and agree to a mail ballot
12 election until this misconduct, namely, allowing partners to
13 vote in-person when a mail ballot election has been ordered
14 or stipulated to -- the Union.

15 Until those issues are adjudicated and resolved, we
16 can't agree to a mail ballot election, and an in-person
17 election should be ordered to ensure that all partners are
18 given the opportunity to vote in person, fairly, and not just
19 certain partners can vote in person while others are not.

20 Until that issue is resolved, at least investigated, and
21 we can determine it is no longer happening, we can't agree to
22 a mail ballot election.

23 Anything further, we rely on the underlying more
24 detailed support in our Statement of Position.

25 HEARING OFFICER LEACH: Okay. Thank you.

1 For the Petitioner, you can move forward with your
2 opening statement.

3 MR. GONZALEZ: Thank you.

4 **OPENING STATEMENT**

5 MR. GONZALEZ: This should have been a very
6 straightforward matter. The issue of the type of election to
7 be conducted is not a litigable issue. Employer's counsel
8 claims on the one hand they are not seeking to litigate the
9 issue; on the other hand, does nothing but attempt to
10 litigate the issue.

11 The *Aspirus Kewneenaw* factors clearly justify a mail
12 ballot election in this case. In particular, they state that
13 where there is a testing positivity rate of 5 percent or
14 higher in the city or county where the election would be
15 held, a mail ballot election is warranted. It is not
16 disputed by the Employer that the current testing positivity
17 rates are significantly higher than that. They're at 10
18 percent in Philadelphia County. It's double the threshold
19 established in *Aspirus Kewneenaw*, so that's well within the
20 Regional Director's discretion to order a mail ballot
21 election.

22 I defer to the Employer and its expertise on matters of
23 coffee and other consumable goods. I do not believe that the
24 Board should offer any discretion to the Employer on its
25 positions in regards to public health and epidemiology.

1 There is certainly nothing in the Statement of Position that
2 would warrant considering them to be experts in this field.
3 That alone should be basis for conducting a mail ballot
4 election.

5 In regards to the other issues that counsel has raised,
6 first in the Statement of Position and again today, the
7 Employer has made extremely wild accusations and broad-based
8 allegations of misconduct nationwide basically. They're
9 saying, well, there's these three regions, and we have
10 evidence that it may be more widespread, yet refusing to
11 produce any of this evidence. So, for instance, the
12 Employer's Statement of Position and its accompanying exhibit
13 refer to "numerous documents demonstrating that Board
14 personnel have secretly colluded with the Union." You can
15 bet, in any proceeding, if somebody had that kind of
16 evidence, they would produce it. It denies the Union due
17 process to allow the Employer to rely on this supposed secret
18 evidence it has that it refuses to produce in response to the
19 Union's subpoena. I would agree this issue should not be
20 litigable, but to the extent that the Employer continues to
21 seek to litigate the issue, due process requires production
22 of those documents.

23 And the attached letter to the General Counsel that the
24 Employer counsel contends represents evidence is not -- it's
25 pure hearsay statements. It's just pages and pages of

1 hearsay and wild accusations based upon this secret evidence
2 the Employer claims to have, none of which was produced in
3 response to the subpoena duces tecum.

4 I am reminded of a -- sort of a famous speech in U.S.
5 history where a U.S. senator claimed that while he could not
6 take the time to name all of the men in the State Department
7 who are members of the Communist Party and members of a spy
8 ring, I have here in my hand a list of 205. In this case,
9 it's Starbucks counsel claiming, we have here in our
10 possession numerous documents that demonstrate widespread
11 collusion between the Board and the Union and its counsel,
12 but then refuses to produce it, yet still insists that the
13 Board consider this wild allegation in departing from its
14 usual position on mail ballot elections.

15 The final point which is just a small detail: In one
16 prior election, faced with the knowledge that the Employer
17 would continue to engage in delay tactics as long as possible
18 and would not agree to a mail ballot election, Union's
19 counsel agreed to, in that one case, an in-person election.
20 The Union doing that in the face of the Employer's continued
21 attempts throughout these proceedings to just delay things as
22 long as possible does not undermine its position or the
23 reasoning that has been previously expressed by the Board as
24 to why, for public health reasons, the mail ballot is
25 preferable.

1 It should not need, at this point, emphasis, but I look
2 at the *New York Times* on a daily basis, and I see 450 people
3 dying of COVID a day; Employer thinks, hey, no big deal, we
4 are back to normal. Not everybody agrees with that. There
5 are many, like myself, for instance, that have
6 immunocompromised family members, in my case, my daughter,
7 and it is callous to just consider people like that, or the
8 elderly, in such a way. And for that reason maintain our
9 position that a mail ballot election is preferable in this
10 context and that the Regional Director has the discretion
11 under case law to do that.

12 Thank you.

13 HEARING OFFICER LEACH: Thank you.

14 The parties have given their position on mail versus
15 manual. I want to ask some questions about some election
16 details. In the -- if the Regional Director orders, well, I
17 guess really for either, so I'll start off with mail ballot.
18 Let me make sure I have these in order so I don't forget
19 anything.

20 With regard to the election, does -- would the Union
21 like to waive any of the 10-day period that they have to have
22 the voter list, or do you want to keep it for the entire 10
23 days?

24 MR. GONZALEZ: The Union will waive that period.

25 HEARING OFFICER LEACH: You will waive the entire 10

1 days?

2 MR. GONZALEZ: That's correct.

3 HEARING OFFICER LEACH: Okay. So let's talk about dates
4 for a mail ballot. I'm just going to pull out my calendar on
5 my phone here just to look and see -- if the election is mail
6 ballot, is there any objection in the month of September or
7 October as far as when we would mail the ballots out?

8 MR. GONZALEZ: The Union would have no objection to any
9 dates.

10 MS. MARKEY: We ask, consistent with, I believe, the
11 prior election. We don't have any objection as to specific
12 dates, but we ask for at least 10 days from the decision of
13 election before any mail ballot election, or the mail ballots
14 are mailed out.

15 HEARING OFFICER LEACH: Okay. And if the parties are
16 fine -- I believe we've given 3 to 4 weeks for them to be
17 returned, and then they are counted approximately 1 week
18 later in the regional office, but we do that via Zoom. That
19 is still okay with the parties as well if it is mail ballot?

20 MS. MARKEY: We would request an in-person counting.

21 HEARING OFFICER LEACH: Okay.

22 MR. GONZALEZ: The Union, for obvious reasons, would
23 request that the usual method be continued. Absolutely no
24 reason to violate the COVID policies like that.

25 MS. MARKEY: Your Honor, I would like to further

1 elaborate that there have been other regions that have
2 allowed the in-person counting, and we are requesting it here
3 for the first time because there has been an inability to see
4 the entirety of the postage and other things that have been
5 relevant in these proceedings involving whether or not
6 partners were able to vote in person versus mail ballot or
7 otherwise consistent with the stipulation, and believe that
8 reviewing the ballots in person is necessary for that.
9 Obviously, willing to put into place whatever COVID protocols
10 are necessary, and ensuring the distancing and limited number
11 of people and mask wearing and other COVID protocols
12 necessary to conduct that very important business to protect
13 the rights of the voters in person.

14 HEARING OFFICER LEACH: Okay. Now, as far as if the
15 Regional Director were to order an in-person election, the
16 most recent payroll period, that's on the SOP document?

17 MS. MARKEY: It is. It's August 21st is the most recent
18 based on today's date. It's biweekly.

19 HEARING OFFICER LEACH: Okay. So it would be
20 August 21st; that's a Sunday. The next one would be
21 September 4th.

22 MS. MARKEY: Correct.

23 HEARING OFFICER LEACH: And what about the contact
24 information for your onsite person at this particular store?

25 MS. MARKEY: That should be Albert Millan, the district

1 manager. I would ask that counsel be copied just because I
2 know that Mr. Millan is going to be on vacation for the next
3 week. So, if necessary, for anything to be sent out, if it's
4 only going to be sent to the representative, I probably would
5 need to confirm.

6 HEARING OFFICER LEACH: Usually, attorneys, we -- the
7 parties will be on that as well. It wouldn't just be Albert.

8 MS. MARKEY: Right. Yeah. If we could keep it as
9 Mr. Millan as the district manager.

10 HEARING OFFICER LEACH: Is his address -- can we just
11 say his mailing address and phone numbers and things for the
12 record?

13 MS. MARKEY: Yeah. Albert, can you give the best
14 contact information to use to receive official NLRB
15 documents? I think before we've used the store address, but
16 if there is another one that would be more applicable here.

17 MR. MILLAN: Are we talking about the store address or
18 -- my email address or the store address?

19 HEARING OFFICER LEACH: The store address is fine.

20 MR. MILLAN: Okay. All right. Give me one second. Let
21 me pull it up.

22 MS. MARKEY: It should be the same as on the petition,
23 so -- I'm sorry on the statement -- it's 2201 South Street.

24 HEARING OFFICER LEACH: And just so we're clear, Albert,
25 your last name is spelled M-i-l-l-a-n?

1 MR. MILLAN: Correct.

2 HEARING OFFICER LEACH: And you're the store manager?

3 MR. MILLAN: I'm the district manager.

4 HEARING OFFICER LEACH: Oh. The district manager, I'm
5 sorry. And the store address?

6 MR. MILLAN: It's 2201 South Street, Philadelphia, PA
7 19146.

8 HEARING OFFICER LEACH: What about a phone number for
9 you? Are you okay with a cell?

10 MR. MILLAN: Yeah. I can give you my cell phone number.
11 It's going to be (b) (6), (b) (7)(C).

12 HEARING OFFICER LEACH: Do you have a fax number by
13 chance?

14 MR. MILLAN: No, I don't.

15 HEARING OFFICER LEACH: We understand. A lot of people
16 don't have that anymore. What about an email address?

17 MR. MILLAN: Sure. My email address is
18 (b) (6), (b) (7)(C) [@starbucks.com](mailto:(b) (6), (b) (7)(C)@starbucks.com).

19 HEARING OFFICER LEACH: Thank you, Mr. Millan. I
20 appreciate it.

21 MR. MILLAN: Thank you.

22 HEARING OFFICER LEACH: Okay. As far as a date, time,
23 and place of an in-person election, are there any dates that
24 would not work for an in-person election in the month of
25 September?

1 MR. GONZALEZ: Not to the Union's knowledge.

2 HEARING OFFICER LEACH: We know September 5th is Labor
3 Day, but this won't be done that fast.

4 MR. GONZALEZ: Yes.

5 HEARING OFFICER LEACH: For the Employer?

6 MS. MARKEY: Let me double-check. I know I'd asked
7 before, but I want to make sure that, Mike and Albert,
8 there's not any dates that I'm unaware of in September that
9 would pose an issue into conducting the election. We had
10 asked that it be held on September 25th.

11 HEARING OFFICER LEACH: That's a Sunday.

12 MS. MARKEY: I'm sorry, that is a typo then. That
13 Monday.

14 HEARING OFFICER LEACH: Okay. That's the 26th.

15 MR. MILLAN: That should be okay.

16 HEARING OFFICER LEACH: So what about in October? Is a
17 Monday the best day to have an election? What if the
18 election were in October or November?

19 MS. MARKEY: Mike, if you could confirm for us when we
20 are going to have most partners in the store. I know for
21 some it's Mondays; others, it's Thursday and Friday. In that
22 late-September/early-October period. I know we have Columbus
23 Day. I'm remiss to recall what day Indigenous Peoples' Day
24 is now.

25 HEARING OFFICER LEACH: That's October 10th.

1 MS. MARKEY: Yeah. I think we want to avoid that. Mike
2 and Albert, is there anything else, operationally, at the end
3 of September or beginning of October, if you could let us
4 know what days of the week we are going to have most partners
5 working or available?

6 MR. PERRY: Most available? It's probably middle of the
7 week, Wednesday, Thursday.

8 HEARING OFFICER LEACH: Who's speaking?

9 MR. PERRY: I'm sorry, Mike Perry.

10 HEARING OFFICER LEACH: What's your title, Mike?

11 MR. PERRY: Store manager.

12 HEARING OFFICER LEACH: Okay. So I know you said
13 initially October 26th -- I'm sorry, September 26th. If we
14 go into October, nothing on October 10th as a holiday, but --
15 did you say Tuesday or Wednesday, or Wednesday or Thursday?

16 MR. PERRY: Tuesday, Wednesday, Thursday is fine.

17 HEARING OFFICER LEACH: Would that be same for November
18 minus the November holidays, Veterans Day and Thanksgiving?

19 MR. PERRY: Correct.

20 HEARING OFFICER LEACH: Okay. I don't know when this is
21 going to issue. What about times for an election, in person?

22 MS. MARKEY: The times that we had put in the Statement
23 of Position, straddling the biggest number of shifts,
24 beginning and ending, we had put 10:00 a.m. to 12:00 p.m. and
25 4:00 p.m. to 6:00 p.m., having two shifts there.

1 Mike, if you can also correct me if there is anything
2 different for October and November on that, whether those
3 times would capture the beginning and/or ending of most
4 shifts?

5 MR. PERRY: What time is that? I'm sorry.

6 MS. MARKEY: 10:00 a.m. to 12:00 p.m. and 4:00 p.m. to
7 6:00 p.m.

8 MR. PERRY: Oh, yeah, that's fine.

9 HEARING OFFICER LEACH: Okay. So that would be October,
10 November. And where would the election take place? What's
11 the location?

12 MS. MARKEY: At the store. And that's why we've
13 introduced the two exhibits. And I also do have some
14 pictures as to location if you think that they're necessary.
15 But I think that the diagram is better.

16 In addition to the certifications with regard to the
17 compliance with GC 10 and the ability to meet all of the
18 COVID protocols, there was some, I think dispute, in the
19 Statement of Positions about that, but we're willing and able
20 to, as we already have in the July 13th election, comply with
21 all COVID protocols from the Board.

22 We can hold the election in the store, close operations.
23 Or we may be able to be more limited in the closure of the
24 store should we have it in the basement. This store is
25 somewhat unique in that it has a large basement. There is,

1 similar to the in-person election held at 12th and Walnut,
2 only one manner of ingress and egress from that location in
3 the basement, and you do have to go through the back room.
4 So, to get into the basement, you have to go through the back
5 room and down a flight of stairs, and that's reflected in the
6 Employer's Exhibit 2.

7 There is, however, a separate means of egress in that
8 you go up the same flight of stairs, and rather than go
9 through the back of house and through the café, you can exit
10 through a back door there. You can't enter through that door
11 because it has to remain locked for safety reasons, but
12 having seen the basement location, I think that that would be
13 a more than adequate space to conduct the election and allow
14 us to minimize closing the store and to allow more privacy in
15 the conduction of the election.

16 HEARING OFFICER LEACH: Okay. I think I need to do
17 something. The email that was sent this morning with the
18 COVID certification and the diagrams, we need to get that
19 into the record. Is that Employer's 1?

20 MS. MARKEY: 1 and 2. The diagram is --

21 HEARING OFFICER LEACH: Which one is Employer's 1, the
22 certification?

23 MS. MARKEY: Yes.

24 **(Employer's Exhibit 1 marked for identification.)**

25 HEARING OFFICER LEACH: Okay. And I will note, I think,

1 that the certification was sent again, recently, to be sure
2 that it was filled in --

3 MS. MARKEY: And that it was not wiped.

4 Bridget, has that been resent?

5 HEARING OFFICER LEACH: I'm just looking at my email.

6 Let me see, it looks like something came through. Yes. So
7 that certification is in an email to everybody, 10:24 a.m.?
8 I just want to be sure that our court reporter has the right
9 document. So there was an email at 9:05 a.m. that has the
10 certification that's Employer's 1. And then another
11 document, Employer's 2, the store diagrams. But then,
12 there's another email, 10:24 a.m. --

13 MS. MARKEY: 10:24 a.m., that should be Employer's 1,
14 the certification that actually came through without the
15 security wiping it.

16 HEARING OFFICER LEACH: Right. Bob, you have all of
17 that right?

18 COURT REPORTER: I have Employer's 1, which is not
19 labeled Employer's 1, I'm trying to label now. One I have,
20 has nothing in it, but the second one has items in it, and it
21 also -- I received it at 10:40 a.m.

22 HEARING OFFICER LEACH: That's fine. As long as it's
23 the one that you can tell it has zeros in all of the boxes,
24 and it's dated and signed.

25 COURT REPORTER: Uh-huh.

1 HEARING OFFICER LEACH: Yes. That's Employer's 1. And
2 then Employer's 2 is a diagram.

3 MS. MARKEY: It's a diagram.

4 **(Employer's Exhibit 2 marked for identification.)**

5 HEARING OFFICER LEACH: It's a diagram, and it has
6 photographs attached. And can you explain -- this is
7 Employer's 2, the location for the election? This is the
8 basement of the store?

9 MS. MARKEY: It's the entirety. So if you look at the
10 left, the left side of the diagram where it has beverage
11 prep, café, that is a the normal Starbucks store. Then the
12 right-hand side where you see a break for the restrooms, and
13 then you see storage/workroom. That's downstairs. So you
14 can see the stairs that go down along with the diagram on the
15 right-hand side.

16 HEARING OFFICER LEACH: So this room is called the
17 storage/workroom?

18 MS. MARKEY: Yes. That is in the basement, and that is
19 where we suggest having the election. If that, for whatever
20 reasons, is not workable, we can hold the election with ample
21 spacing and ability to comply with GC 10 in the café.

22 HEARING OFFICER LEACH: Okay. So we have date, time,
23 and place. Well, we have date and time, and we have two
24 potential locations, either the storage/workroom or in the
25 café itself.

1 MS. MARKEY: Correct.

2 HEARING OFFICER LEACH: Which would be closed during
3 polling periods.

4 MS. MARKEY: Correct.

5 HEARING OFFICER LEACH: Okay. From the Union, any
6 objection to Employer's 1 and 2 being put into evidence?

7 MR. GONZALEZ: Yes. Well, first off, the certification
8 is which one? It's Employer's Exhibit 2 for identification?

9 MS. MARKEY: Exhibit 1.

10 HEARING OFFICER LEACH: The certification is Exhibit 1.

11 MR. GONZALEZ: I would like to conduct a voir dire of
12 Mr. Perry in regards to the document.

13 MS. MARKEY: We would like to have a sense of what those
14 questions are off the record before he's questioning
15 Mr. Perry.

16 MR. GONZALEZ: I'm questioning him in regards to what
17 he's certified in this document.

18 MS. MARKEY: I understand that. My understanding was we
19 weren't going to have any witnesses in this proceeding, and
20 we haven't had this before, so I'd like the opportunity to
21 know what those questions are and to talk with the witness
22 beforehand.

23 HEARING OFFICER LEACH: Okay. What I need to do, then,
24 I'm going to have to go off the record because this is a
25 little bit of a different issue. Typically, we just admit

1 these documents, and we haven't had any testimony on them, so
2 just give me a moment, please.

3 Can we just go off the record, Bob?

4 MR. GONZALEZ: If they're not being admitted for the
5 truth of the matter asserted on them, then I have no
6 objection. If they are, I do want to conduct voir dire.

7 MS. MARKEY: Mary, you may know better than me, but I
8 would hope that any certifications are being submitted for
9 the truth of the matter asserted, so I would prefer that we
10 go off the record to discuss before Mike is asked any
11 questions.

12 HEARING OFFICER LEACH: Okay. I mean, yes, I mean,
13 typically when we -- when we receive -- one moment, let me
14 just --

15 MR. GONZALEZ: Well, I just stated in light of the
16 admission of the attachment to the SOP, so I figured I'd ask
17 first.

18 HEARING OFFICER LEACH: Usually, we do accept these
19 documents, this particular document, typically, when the
20 parties have certified that there has been no COVID at the
21 facility. Who is it, I'm sorry, Mike Perry, that filled this
22 out?

23 MS. MARKEY: Yes. The store manager.

24 **HEARING OFFICER LEACH: Can we go off the record, Bob?**

25 **(Off the record from 11:29 a.m. to 11:40 a.m.)**

1 HEARING OFFICER LEACH: Okay. So before we took a
2 break, there was a question from the Union to voir dire one
3 of the Employer's witnesses about the COVID certification
4 document. I'm not going to allow any voir dire. We're not
5 taking evidence, or we're not litigating this issue. So
6 there's no voir dire for that. I don't know if the Union
7 wants to go first or the Employer wants to respond to that.
8 Maybe it's better for Julian to go -- to respond to the
9 ruling.

10 MR. GONZALEZ: Certainly. The Union would like to raise
11 an objection to the ruling because it's been previously
12 represented that the certification is being presented for the
13 truth of the matter asserted. The Union believes that since
14 this is one of the crucial issues in this matter, the
15 purported safety of conducting the election, that it should
16 be able to question the witness who is here right now,
17 Mr. Perry, the store manager, in regards to the certification
18 he made. And, in particular, if permitted, I would have
19 questioned the witness regarding his assertions that, within
20 the preceding 14 days, regarding the number of individuals
21 present in the facility who meet various categories are all
22 zero.

23 I would question him whether if he -- in stating the
24 facility, whether he was referring to the Starbucks store at
25 2201 South Street in Philadelphia. I would question him as

1 to what information he was relying on and what steps he had
2 taken to confirm that no one had tested positive for COVID-19
3 or been directed by a medical professional to proceed as if
4 they had tested positive for COVID-19 within the prior 14
5 days. I would have asked him if, in addition to what
6 information he was relying on and what steps he had taken to
7 verify that, I would ask him if he had called every employee.
8 I would ask him if he had spoken to every customer who
9 entered the facility or taken other steps to verify that
10 information. I would've asked what steps he had taken to
11 verify that no one who had entered the store in that period
12 was awaiting results of a COVID-19 test.

13 I would have asked him in regard to what information he
14 had obtained from store partners as well as customers,
15 continuing on to number 3, which asks if there had been
16 individuals present who exhibit symptoms of COVID-19. I
17 would have asked him what information he was relying on and
18 who he had consulted. And, in particular, I would've asked
19 him if he -- what information he was relying upon for periods
20 in the 14 days when he had been himself present at the store.

21 Finally, in regards to the certification number 4, that
22 Mr. Perry gave, regarding whether any individual present in
23 the facility had had contact with anyone in the previous 14
24 days who tested positive for COVID-19, or were awaiting test
25 results, I would have similarly asked him what the basis of

1 his knowledge was and what steps he had taken to consult
2 store personnel, customers, or anyone else who had been in
3 the store at any time within the 14-day period.

4 Thank you.

5 HEARING OFFICER LEACH: You're welcome.

6 For the Employer, did you want to respond to that or no?

7 MS. MARKEY: We agree with the ruling to the extent that
8 the certification as designed is valid and has the same
9 effect as a sworn declaration. I also think, now
10 understanding the basis for the request for voir dire, the
11 first time that we've had this happen in any of these
12 proceedings, and we've had a lot of talk today about not
13 delaying and not over-litigating issues, I'm a little bit,
14 completely surprised by this and don't understand the basis
15 for it. It goes way beyond *Aspirus*, and *Aspirus* requires to
16 be filled out to the best of his knowledge. Any inquiry as
17 to the basis of that knowledge and litigation as to the
18 extensiveness of the filling out of the form and essentially
19 litigating the safety of the store under the COVID protocols
20 isn't applicable and isn't appropriate under the
21 certification or the standards.

22 HEARING OFFICER LEACH: Okay. Thank you.

23 I just want to be sure, so I don't forget this, this is
24 Employer's 1 and 2, and so -- I'm not sure where we left off
25 with getting those into the record. Employer's 1 was the

1 COVID certification that the Union objected to, correct?

2 MR. GONZALEZ: Yes.

3 HEARING OFFICER LEACH: Voir dire. Okay. I'm sorry.

4 MS. MARKEY: The filled out one.

5 HEARING OFFICER LEACH: Okay. So I'm going allow that
6 into the record understanding the Union's objection.

7 **(Employer's Exhibit 1 received in evidence.)**

8 HEARING OFFICER LEACH: What about Employer's 2, which
9 is the store diagram and the photographs? Any objection to
10 that?

11 MR. GONZALEZ: No.

12 HEARING OFFICER LEACH: Employer's 2 is received.

13 **(Employer's Exhibit 2 received in evidence.)**

14 HEARING OFFICER LEACH: I think that there are some
15 other -- I feel like I was emailed something else -- is
16 there -- are there some other documents?

17 MS. MARKEY: We have, at this time, we would like to
18 introduce, and we think this would be done through
19 administrative notice, the objections filed in Region 14.
20 I'm looking to give the exact time stamp. James Lee did
21 circulate that. In my email it appears 11:20 a.m. And it's
22 marked as Region 14 and 13 objections. We'd like to have
23 this document admitted as Employer's Exhibit 3.

24 **(Employer's Exhibit 3 marked for identification.)**

25 HEARING OFFICER LEACH: What is the purpose of these

1 documents?

2 MS. MARKEY: To the extent that the exhibit to our
3 Statement of Position, which is the August 15th letter, is
4 asserted by the Union to be hearsay and not admissible, we
5 believe that it's necessary. Again, not wanting to go and to
6 litigate this issue and the current proceedings being
7 ongoing, the objections themselves go to the nature of the
8 misconduct. And, again, talking about the objections, not
9 being admitted for the truth of them. They are objections,
10 they are being litigated, and the same way with the letter.
11 But to the extent there's an allegation that the letter is
12 hearsay and nothing underlying it -- and I think a
13 mischaracterization of this being just assertions brought by
14 Starbucks, whereas there is a whistleblower, an NLRB employee
15 that has brought these assertions of misconduct. It's not
16 just Starbucks writing a letter to Abruzzo. We would like to
17 have the objections, and just the objections, and, again, not
18 for the truth of the matter, but for the existence of the
19 objections, consistent with the letter referencing objections
20 being filed, of it being a proceeding ongoing, and the very
21 fact that there is a proceeding ongoing and the fact that
22 objections have been filed is relevant to our request that
23 mail ballot elections be stayed and we have in-person until
24 these are resolved. Again, not going in for the truth of the
25 matter underlying them or the truth of the allegations,

1 because that is currently subject to investigation and the
2 objections litigation, but the existence of the letter that's
3 attached to our Statement of Position is relevant in the same
4 way as these objections that are currently being litigated
5 are relevant.

6 HEARING OFFICER LEACH: What's the Union's position on
7 this?

8 MR. GONZALEZ: The Union's position is that these
9 documents have absolutely no relevance because, as you have
10 stated repeatedly, Madam Hearing Officer, this is not a
11 litigable issue, and the Employer again seeks to present
12 documents that contain only hearsay allegations. The fact of
13 a document filed by the Employer saying there is an alleged
14 whistleblower has absolutely no relevance. It does not even
15 establish the existence of a whistleblower, no more than my
16 filing a document saying Santa Claus exists, it's proof of
17 Santa Claus existing. Therefore, I object to this continued
18 effort to, on the one hand, state we're not litigating the
19 issue, and then the Employer continues to try to present
20 self-serving statements on behalf of this issue.

21 HEARING OFFICER LEACH: One moment. Give me a moment to
22 think about that.

23 Are there any other documents that the Employer wanted
24 to enter the record?

25 MS. MARKEY: No.

1 HEARING OFFICER LEACH: Does the Union have any other
2 documents it wanted to put into the record?

3 MR. GONZALEZ: No, thank you.

4 HEARING OFFICER LEACH: And I see that the parties sent
5 in their signed Board's Exhibit 2. Okay. I'm going to get
6 back to you on this issue with these objections.

7 It sounds like we talked about the date, time, and place
8 for a manual election. I think we've kind of exhausted that.
9 Give me one moment just to be sure.

10 Do we need any notices of election or ballots translated
11 to any other languages?

12 MS. MARKEY: Mike, if you could confirm, but I don't
13 believe so. Or if there is anyone in the store that we
14 regularly communicate with, with a language other than
15 English?

16 MR. PERRY: No.

17 MR. GONZALEZ: The Union does not believe that there's a
18 need to translate the materials into a language other than
19 English.

20 **HEARING OFFICER LEACH: Okay. Can we go off the record,**
21 **Bob?**

22 **(Off the record from 11:51 a.m. to 11:55 a.m.)**

23 HEARING OFFICER LEACH: Okay. So the Employer wanted to
24 put into the record the objections that it filed in Region 13
25 and 14. At this time, I'm not going to allow those into the

1 record. I don't think that they are going to help us to
2 decide the issue here, which is manual versus mail. So those
3 objections, or those documents will not be allowed into this
4 record. And, again, I'm just going to continue to state
5 that, the issue here is really manual versus mail.

6 **(Employer's Exhibit 3 rejected.)**

7 HEARING OFFICER LEACH: So, at this point, we have
8 discussed everything we needed to discuss. So I'm going to
9 go back to the Union and ask, do you still need a response to
10 -- based on what's in the record. What's in the record now
11 is the SOP document, the SOP submission and the RSOP
12 submission. The Region is going to be focusing on manual
13 versus mail. Do you still want the Region to respond to the
14 subpoena request, particularly paragraphs 1 through 10, which
15 you say you did not receive?

16 MR. GONZALEZ: I think, yes. The Union will request
17 that the Region order the Employer to produce all documents
18 responsive to requests 1 through 10, which are all requests
19 for the documents underlying the claims that the Employer has
20 made in its Statement of Position as well as today's hearing
21 regarding extraordinary circumstances that it claims exist
22 showing serious wrongdoing by any NLRB and the Union that
23 warrant the holding of an in-person election, given the
24 repeated reference to these claims in the Statement of
25 Position as well as by counsel at today's hearing. We think

1 that due process requires their production.

2 HEARING OFFICER LEACH: Okay. If you could give me a
3 few moments, I'm going to go off the record, and I will come
4 back, and I will have a decision for you on that, and then I
5 think at that point, we will probably be wrapping up.

6 **Can we go off the record?**

7 **(Off the record 11:57 a.m. to 12:07 p.m.)**

8 HEARING OFFICER LEACH: So I think our final issue for
9 today, before we close the hearing, is the issue concerning
10 the subpoena. The Union presented the Employer with a
11 subpoena with approximately 16 paragraphs, has decided that
12 it no longer needs paragraphs 11 through 16 but still wants
13 paragraphs 1 through 10, which relates to documents that it
14 is requesting, I guess, to support the Employer's August 15th
15 submission to the General Counsel concerning these mail
16 ballot impropriety issues in other regions. So, at this
17 point, what I would like is for the Union to submit an offer
18 of proof as to why you need that information. What would it
19 show? Why is it relevant to the issues at this hearing?

20 MR. GONZALEZ: Certainly. Thank you for the
21 opportunity.

22 In the big picture, the Employer's contention, and it's
23 Statement of Position today at the hearing, has been that a
24 deviation from the Board's current practice regarding holding
25 elections is warranted by evidence it claims to have

1 regarding widespread wrongdoing by agents of the National
2 Labor Relations Board and the Union in particular -- and
3 Employer's counsel, including the firm that I am employed by.

4 The Union has simply sought the documents that the
5 Employer's counsel has referred to at this hearing in its
6 Statement of Position to be able to defend against those
7 claims which -- it's not the Union that has contended this
8 warrants a mail ballot election; it's the Employer. And
9 we're simply trying to attempt to hold them to their
10 contentions and the proof of them.

11 Specifically, paragraph 1 of the subpoena duces tecum
12 refers to what the Employer's Statement of Position and again
13 today Employer's counsel has referred to as a "whistleblower
14 complaint." There's nothing in anything that's been
15 produced by the Employer that demonstrates the existence of a
16 whistleblower or a whistleblower complaint. Therefore, the
17 Union has not been in a position to adequately address that
18 issue as it relates to the propriety of a mail ballot
19 election. The Employer contends that it's protected under
20 the Whistleblower Protection Act. It has not articulated why
21 or why redactions of the identity of the whistleblower would
22 not address that. Even if not, the Employer should not be
23 able to rely on the supposed existence of secret evidence to
24 request the Board take action.

25 The second point is -- tracks closely -- the Employer's

1 allegations in its Statement of Position regarding issues
2 such as, and this is verbatim what the Employer says, that
3 the NLRB has "secretly coordinated with Union agents to
4 arrange special voting procedures, given Union agents
5 confidential information, created duplicate and triplicate
6 ballots," and among other things, "collaborated with the
7 Union to increase the number of pro-Union votes and affect
8 the outcome of elections." These are all extremely serious
9 allegations. It is easy to throw mud. If you're saying that
10 this justifies or requires, in fact, a mail ballot election,
11 I think you'd have to put up the evidence for that.

12 The Employer has simply produced a letter written by
13 counsel for Starbucks as supposed evidence. It is evidence
14 of nothing of those allegations, and we believe we deserve to
15 see the actual records relied upon.

16 The third position for records regarding the Employer's
17 claim that it has evidence that similar misconduct occurred
18 in mail ballot elections in Region 19, again, a very serious
19 allegation. To the extent the Employer claims this requires
20 a mail ballot election, they should be required to produce
21 the evidence of that.

22 Four, the same records in support of the same allegation
23 by the Employer regarding alleged misconduct in Region 13.

24 Five is for records demonstrating communication between
25 the Employer or Employer's counsel with agents of the

1 National Labor Relations Board in regards to representation
2 proceedings within the last year concerning correction of
3 employee mailing addresses, sending them replacement ballots
4 or otherwise facilitating employee voting. The Employer has
5 now today at the hearing made numerous statements of the
6 Union allegedly trying to assist the Board in getting ballots
7 to employees is misconduct on -- whereas, on information and
8 belief, Employer counsel has regularly done similar activity
9 on its own. It's therefore relevant.

10 Six, records relating to the allegation in the Statement
11 of Position that NLRB agents have engaged in "concealment of
12 misconduct and lack of neutrality." If that were true,
13 possibly it would warrant a mail ballot election. But we
14 have no evidence supporting that statement, and the Union
15 requests it be produced so it could address the allegation.
16 Similarly, the allegation in the attachment to the Statement
17 of Position that there's been similar misconduct in other
18 regions.

19 Paragraph 7, similarly, another very broad statement by
20 the Employer that there's been in aid, misconduct, and lack
21 of neutrality in unfair labor practice cases.

22 Nine, a very bizarre accusation that's included in the
23 Employer's Statement of Position that "Board personnel, in
24 coordination with Union representatives, engaged in ballot
25 harvesting among Union supporters." We don't believe that

1 it's in accordance with due process to allow an employer to
2 say that this mail ballot election is required under these
3 wild accusations without submitting any underlying evidence
4 of it.

5 And, finally, they requested, and this is again a quote
6 from the Employer's Statement of Position, the exhibit to it,
7 where they refer there being "numerous documents, including
8 emails between Board officials and Union representatives"
9 that it says demonstrates misconduct. Again, we think in any
10 fair proceeding, that one party can't rely on the existence
11 of numerous documents, none of which it has presented in the
12 proceeding.

13 That is the basis, Madam Hearing Officer, why the Union
14 is requesting that production of the documents be compelled.

15 HEARING OFFICER LEACH: Is there anything else you want
16 to add about how those documents would be relevant to this
17 particular hearing?

18 MR. GONZALEZ: Certainly, Madam Hearing Officer. Just
19 to say that they are relevant to the extent that the Employer
20 is relying on these allegations as warranting a mail ballot
21 election and the Union's ability to adequately those. That
22 is the relevance to the proceeding, and so that the Union can
23 adequately address the contentions that are made by the
24 Employer in its Statement of Position and at this hearing.

25 HEARING OFFICER LEACH: Okay. Thank you very much for

1 this. Like I said, the Regional Director has given the
2 directive to rule on this. My ruling is that I understand
3 the offer of proof, but I don't think there's enough evidence
4 here to support why you need these documents, numbers 1
5 through 10 in the subpoena, because, again, the Region in
6 this hearing is focusing on mail versus manual, and these
7 particular issues have not come up in our region. So it's
8 not at issue here. So at this point, the offer of proof is
9 rejected, and I'm going to grant the Employer's motion to
10 revoke the subpoena related to those remaining documents.

11 I believe that will take care of the final issue that we
12 had in the hearing that the parties have given their
13 positions on the issues. I have to read a little bit of
14 information into the record, and then, if you like, I can
15 give you an opportunity -- you can make a closing statement,
16 and then we can talk about briefs if you would like to brief.

17 The Regional Director will issue a decision in this
18 matter as soon as practical and will immediately transmit the
19 document to the parties and their designated representatives
20 by email, facsimile, or overnight mail, if neither an email
21 address nor facsimile number is provided. Prior to the
22 hearing, the parties were provided with Form 5580,
23 Description of Voter List Requirement After Hearing in
24 Certification and Decertification Cases, which explains the
25 Employer's obligation to furnish a voter list should an

1 election be directed in this matter.

2 If possible, what I would like to do is just go back to
3 -- the documents that I sent to the parties yesterday
4 included this Form 5580, and I want to be sure that that gets
5 into the record. Give me one moment, please.

6 If the parties would look at -- I sent an email
7 yesterday with my original Board's Exhibit 1, which is the
8 longer one before I separated it. I sent it at 3:22 p.m.,
9 and I also sent it to the Court Reporter. There is a
10 document there, Form 5580. That form, I would like to submit
11 it into the record. It can be Board's Exhibit 5.

12 **(Board's Exhibit 5 marked for identification.)**

13 HEARING OFFICER LEACH: It's just this form that
14 explains the voter list requirement. The Agency wants to be
15 sure that we put that into the record. I think everybody
16 should have that. I can certainly resend it if need be.

17 Is there any objection to that Form 5580 being put into
18 the record as Board's Exhibit 5?

19 MR. GONZALEZ: No objection from the Union. But I would
20 appreciated it if you could please email it to me.

21 HEARING OFFICER LEACH: Yes. Give me one moment.

22 MS. MARKEY: Same for the Employer. It doesn't look any
23 different than the one we used, but just so that we are all
24 on the same page, that would be helpful.

25 HEARING OFFICER LEACH: Yes. One moment. I'm sending

1 it right now.

2 Okay. I sent that to the parties again, and both
3 parties had no objection, right?

4 MS. MARKEY: Correct.

5 MR. GONZALEZ: That's correct.

6 **(Board's Exhibit 5 received in evidence.)**

7 HEARING OFFICER LEACH: Okay. All right. I'm just
8 going to move forward with what I need to read into the
9 record.

10 Does any party want to make a closing argument, or would
11 you like to save that for your brief? Or you can do both.

12 MS. MARKEY: We don't see the notes --

13 MR. GONZALEZ: Given the description of the issues
14 presented by the Hearing Officer and the conclusion that
15 they're not litigable, I think it would be a waste of time
16 and serve no purpose other than delay to have written briefs.
17 Clearly, if the Employer insists on them, then we will also
18 submit one. But given the narrow issues described by the
19 Hearing Officer, we see no benefit to them.

20 MS. MARKEY: Yeah. And, unfortunately, in light of the
21 issue with the mail ballot improprieties, we do need to brief
22 the issue, despite, we understand, the scope that you
23 defined, Mary. We understand the position, but we do need to
24 brief.

25 HEARING OFFICER LEACH: Okay. I'm just looking at my

1 calendar here.

2 So would you like to give a closing statement, or would
3 you just like to rely on the brief? I'm going to allow 5
4 days for that.

5 MS. MARKEY: We will just rely on the brief.

6 HEARING OFFICER LEACH: Julian, do you want to do the
7 same?

8 MR. GONZALEZ: We will also rely on the briefing.

9 HEARING OFFICER LEACH: All right. So, no closing
10 statements, but both parties will submit a brief, and they
11 are due in 5 business days, so that would be, I will say
12 close of business, September 9th, since Monday is the
13 holiday.

14 MS. MARKEY: Understood. And I believe we've had to
15 make this request before. We do need to request an extension
16 of the briefing schedule. The last time -- we may need to
17 this time. Do we need to submit that in writing? Are we
18 able to make that request on the record now for an additional
19 5 days?

20 HEARING OFFICER LEACH: Well, I believe you can make it
21 now. I believe the rules say that the parties can ask for
22 additional days. Is there a reason for that? Since this is
23 kind of a similar issue that's been -- well, the mail versus
24 manual has been briefed before?

25 MS. MARKEY: I understand that, and I understand that

1 the Board views the scope differently, but we will be
2 briefing the issue with regard to the improprieties and why
3 that warrants in-person election, and that requires an
4 additional amount of confirming and getting information
5 between the attorneys here. If we were just using the same
6 brief that we did in the last election, we wouldn't need the
7 extension, and we didn't need the extension that time. This
8 time, in light of the additional argument and the holiday
9 weekend and the need to get the client approval for that, in
10 an abundance of caution, I would like to request the
11 additional 5 days.

12 HEARING OFFICER LEACH: So you're asking until the close
13 of business September 16?

14 MS. MARKEY: Yes.

15 HEARING OFFICER LEACH: From the Union?

16 MR. GONZALEZ: The Union opposes the request for an
17 extension. As been noted repeatedly, it is an extremely
18 narrow issue; it's not a litigable issue. The Employer has
19 submitted a lengthy Statement of Position, accompanied by a
20 lengthy letter listing its allegations. There's been
21 agreement that there will be no presentation of further
22 evidence on the issues. Therefore, this represents nothing
23 more than a delaying tactic to delay the exercise of the
24 right to vote by Starbucks' employees, and we strongly oppose
25 the request.

1 HEARING OFFICER LEACH: Okay.

2 MS. MARKEY: I'm sorry, Mary. To be clear, I should
3 have said this in the opening, we do have the legal issues to
4 brief. So we agree on the limited record but nonetheless
5 believe that the legal issues, including the new ones that
6 are very important regarding the disenfranchisement of
7 partners and voters, is important enough that we need to
8 request the extension.

9 HEARING OFFICER LEACH: I'm going to grant the extension
10 until the close of business September 16th.

11 So briefs will be due by close of business by
12 September 16th. That's Friday, September 16th.

13 I have to read a little bit more into the record,
14 please.

15 The parties are reminded that pursuant to Section 102.5
16 of the Board's Rules and Regulations, briefs and other case
17 documents must be filed electronically through e-filing
18 through the Agency's website at www.nlr.gov. Unless the
19 party filing the document does not have access to the means
20 for filing electronically, or filing electronically would
21 impose an undue burden, briefs or other documents filed by
22 means other than e-filing must be accompanied by a statement
23 explaining why the party does not have access to the means
24 for filing electronically, or filing electronically would
25 impose an undue burden. Filing a brief or other document

1 electronically may be accomplished by using the e-file system
2 on the Agency's website, www.nlr.gov. Once the website is
3 accessed, click e-file documents, enter the NLRB case number,
4 and follow the detailed instructions. The responsibility for
5 the receipt of documents rests exclusively with the sender.
6 A failure to timely file the brief will not be excused on the
7 basis that the transmission could not be accomplished because
8 the Agency's website was offline or unavailable for some
9 other reason, absent a determination of technical failure of
10 the site with such notice will be posted on the website
11 itself.

12 So I would like to be sure that, for the Employer, have
13 you submitted all exhibits at this time?

14 MS. MARKEY: We have.

15 HEARING OFFICER LEACH: For the Union?

16 MR. GONZALEZ: Yes.

17 HEARING OFFICER LEACH: Okay. Please remember that you
18 can request an expedited copy of the transcript from the
19 court reporter. His email address is included in the emails
20 that have been going back and forth, so you can email him
21 about that. I just want to make sure, for the court
22 reporter, that you have all of the documents at this time,
23 including the signed Board's Exhibit 2 from the parties?

24 COURT REPORTER: Yes.

25 HEARING OFFICER LEACH: Okay. Is there anything further

1 that the Employer would like to present?

2 MS. MARKEY: Not at this time, thank you.

3 HEARING OFFICER LEACH: Anything further from the Union?

4 MR. GONZALEZ: No, thank you.

5 **HEARING OFFICER LEACH: At this time, the hearing will**
6 **be closed. And we can go off the record.**

7 **(Whereupon, at 12:28 p.m., the hearing in the above-entitled**
8 **matter was closed.)**

9

10 **C E R T I F I C A T I O N**

11 This is to certify that the attached proceedings before
12 the National Labor Relations Board (NLRB), Region 04, in the
13 matter of **STARBUCKS CORPORATION**, Case No. **04-RC-301198**, via
14 videoconference, on **September 1, 2022**, was held according to
15 the record, and that this is the original, complete, and true
16 and accurate transcript that has been compared to the
17 recording, at the hearing, that the exhibits are complete and
18 no exhibits received in evidence or in the rejected exhibit
19 files are missing.

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G. Bob Auguste

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Official Reporter

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